



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Commission on Virginia Alcohol Safety Action Program (VASAP)
<b>Virginia Administrative Code (VAC) citation</b>	24VAC35-60
<b>Regulation title</b>	Ignition Interlock Regulations
<b>Action title</b>	Proposed new regulation (24 VAC 35-60)
<b>Date this document prepared</b>	December 12, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This is a new regulation; therefore, there are no changes to an existing regulation.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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§ 18.2-271.2 of the Code of Virginia establishes the Commission on Virginia Alcohol Safety Action Program (VASAP) in the legislative branch of state government. § 18.2-270.2(A) directs the Executive Director of the Commission on VASAP or his designee to certify ignition interlock systems in the Commonwealth and to adopt regulations and forms for the installation, maintenance and certification of such ignition interlock systems.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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Presently, there are no existing ignition interlock regulations. These new regulations are required by §18.2-270.2 of the Code of Virginia. §18.2-271.1 of the Code of Virginia requires any person convicted of a first offense DUI (who had a blood alcohol concentration of 0.15 or above), and any person convicted of a second or subsequent DUI, to have an ignition interlock device installed on their vehicle(s) as a condition of issuance of a restricted driver's license. Ignition interlocks prevent drivers from starting their vehicles if they have been drinking. This protects the safety of the offender, his family, and the public. Interlocks also serve a probationary function by recording on the unit's data chip, the driving activities of probationers. This regulation is designed to ensure that the interlock devices installed in Virginia are reliable, accurate, and properly installed. Furthermore, it ensures that interlock service centers are easily accessible to all Virginia citizens and that quality service is provided in a timely manner.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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The new regulations will provide information regarding the certification of ignition interlock devices and ignition interlock service providers in Virginia. Procedures for the installation, maintenance and removal of ignition interlock devices will be outlined as well as requirements for reporting and record keeping.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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These regulations provide detailed information and outline performance standards for the Commonwealth's ignition interlock program. Information about what interlock companies need to do to conduct business is included so that multiple vendors can potentially operate in the state, thereby given customers more options. The regulations further ensure that both the public and ignition interlock service providers are aware of the Commission's performance expectations and the potential consequences of noncompliance. The regulations provide a mechanism for the government to award contracts to qualifying companies and to cancel contracts with companies that do not meet minimum standards. These provisions should result in better service provision to the citizens of the Commonwealth. No apparent disadvantages to the public or the government are noted; however, provisions in the regulations that prohibit interlock companies from subcontracting installations might bar some interested businesses in Virginia from doing contract work for interlock vendors.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no requirements that exceed applicable federal requirements. All ignition interlocks in Virginia must meet standards as established by the National Highway Traffic Safety Administration (NHTSA).

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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These regulations will have an equal impact on all Virginia localities since they require all ignition interlock vendors to provide statewide service and to charge the same fees in all geographical areas.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the Commission is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Commission is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Richard Foy, Commission on VASAP, 701 E. Franklin St., Ste. 1110, Richmond, VA 23219, (804) 786-5895, (804) 786-6286 (fax), rfoy.vasap@state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>The cost to the state will be limited to the partial salaries of VASAP personnel required to administer the program. VASAP personnel will be primarily concerned with monitoring ignition interlock reports, record keeping and serving as the liaison with the courts and DMV. A small portion of the offender's monthly interlock rental fee will be used to fund program administration.</p>
<p><b>Projected cost of the regulation on localities</b> <b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>There should be no economic impact on localities. Interlock companies that meet the requirements to contract in Virginia have a good chance of being profitable since over 4000 individuals presently are required to have an interlock installed, and there is the potential for up to 15,000 units being installed. Presently, only one interlock company is operating in Virginia. Their profit will probably drop as other vendors enter the market.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>These regulations are not expected to have any impact on the status quo of small businesses in Virginia. If small businesses were permitted to subcontract for installation work with interlock vendors/manufacturers, there would be potential for certain businesses to pick up some work.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>The ignition interlock program has been in existence in Virginia for several years. The ignition interlock law (§18.2-271.1) has a significant economic effect on families because it requires all vehicles that are owned or registered to the offender, in whole or in part, to have an interlock installed. These regulations, however, do not impact what has already been the law for many years, nor do they impact small businesses in Virginia.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Since these regulations are required by the Code of Virginia, and they have a negligible impact on the existing economic landscape, no alternatives are offered. Some states permit interlock vendors to subcontract work to small businesses, but the nature of VASAP’s probationary system does not make this a prudent option. (See analysis below).

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

Integrity of the Ignition Interlock Program is best served by restricting the delivery of interlock client service to the actual provider of the product (device manufacturer or authorized service provider), thereby effectively preventing the extension of subcontracts to local, small business service providers who lack long-term investment, long-term experience, and/or in-depth knowledge of product and service, and a higher likelihood of neglect of duty and/or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage*

*economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

As mentioned above, the cost of installing ignition interlocks on all vehicles owned by, or registered to, an offender can be quite expensive for a family. Other family members can be inconvenienced by having to learn to use the interlock, and it can be embarrassing for offenders and other family drivers to have to give a breath test before being able to operate their vehicle. Nevertheless, the experience is valuable in educating the offender and modifying his behavior. The presence of the device also serves as a learning tool, providing many “teachable moments” for children to observe the hardships associated with being convicted of DUI. Most importantly, the offender and family are protected from being seriously injured or killed in an alcohol-related crash by having an interlock installed.

These impacts on the family already exist due to present interlock law. The proposed new regulations will not have any additional impact on the family.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>

These are new regulations, so no changes apply.